

### **REMARKS**

This paper is being filed in response to an Office Action dated June 5, 2006. As this paper is being filed within the three month time for reply, no fees should be due at the present time.

The undersigned refers initially to a telephone conversation held May 15, 2006 between the undersigned and Examiner Alam, and the undersigned thanks the Examiner for the courtesies extended during that telephonic interview. During that interview the Examiner's restriction requirement was discussed, and the undersigned elected Group I, comprising claims 1-16 and 19-27. Claims 17, 18 and 28 are presently withdrawn from consideration with traverse, as the undersigned does not necessarily agree with the grounds for restriction but, in the interest of advancing prosecution, will prosecute the presently elected claims with the understanding that the withdrawn claims will be argued for further consideration upon allowance of claims in this case, or shall be pursued in separate divisional applications in the future without prejudice.

Turning to the present rejections, claims 1-16 and 19-27 stand rejected under 35 U.S.C. §102 as being anticipated by Parker, U.S. Patent No. 6,677,976.

The Examiner's attention is directed to the amendments to independent claims 1, 9 and 19, which contain the further limitation: "the image being communicated at a frame rate and at an image quality, at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user." Support for this additional feature may be found, among other places, at paragraph 75 through 94 of the present application. Accordingly, no new matter has been entered.

Parker contains no disclosure of how conditions of a communication path could or should impact the way an image is communicated and contains no discussion of the aforementioned claim element present in the independent claims as now amended. Thus, as Parker does not teach, describe or suggest that the image being communicated is communicated at a frame rate and at an image quality, at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user, Parker does not teach all of the elements presently claimed. Thus Parker cannot form the basis of a proper 35 U.S.C. §102 rejection, and it is respectfully requested that such rejection be withdrawn and the claims passed to allowance.

Additionally, there is no teaching or suggestion in Parker that would form the basis of a §103 rejection with any other reference of record. Parker provides no teaching or motivation to effect the way an image is communicated in the Parker system, either as a result of conditions of a communication path between a first user and second user or otherwise. Indeed, Parker is directed to communicating video images along with audio so as to have a video telephone call that can be initiated during a chat session. The audio portion of the telephone call is established through a separate telephone network from the network that carries the images. Thus as taught by Parker, "in the case of prior art video conferencing using the Internet, such as video chat, insufficiency of the bandwidth utilized for a video call has caused poor voice and picture quality. In the above video telephony system the voice channel provides more than enough bandwidth to ensure that a good quality voice transmission is obtained. In addition, removing the voice data from the Internet transmission frees up more of the available bandwidth for the video channel and that for the video data in that channel. "Moreover, since the actual understanding of the

video telephony conversations by the participants depends more on the voice signals than on the video signals, the overall satisfaction with video telephony is increased even when video quality may be somewhat lacking.”

Thus, Parker is disinterested in video quality in an instant messaging system and instead is focused on audio quality of a live spoken conversation. Bandwidth issues in Parker are solved by extracting the audio portion of a video telephone call and carrying it over a separate channel like a telephone network. Thus, Parker in fact teaches away from adjusting the way in which an image is communicated as a result of conditions on a communication path between users. Accordingly, it is believed that Parker cannot form the basis of a satisfactory 35 U.S.C. §103 rejection, and, for this additional reason, the claims should be passed to allowance.

Further, while all of the dependent claims now contain the above referenced new limitation, and should be allowable for the same reasons as presented above with respect to the independent claims, the Examiner's attention is directed to claims 4, 12 and 22 and the rejection thereto based on Parker. It is respectfully submitted that contrary to the Examiner's assertion with respect to the teachings of Parker, Parker is in fact devoid of any teaching concerning how the network adjusts in the presence of a third user using a second viewing computer. Specifically, claims 4, 12 and 22 are directed to further steps of handling a request from a second viewer after passing the image from the broadcaster computer to the first viewer computer. Nothing in Parker is directed to readjusting the way in which images are passed in the presence of a third user using a second viewer computer. Applicant has reviewed the cited portions of Parker, specifically column 6, lines 30-54; column 7, lines 1-15; and column 8, lines 31-67, and can find no reference in the cited passages, nor

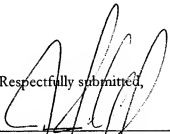
elsewhere in Parker, dealing with the addition of a third user using a second viewer computer to view images from a broadcasting computer. The passages cited by the Examiner, it is respectfully submitted, are simply directed to the establishment of communication between user one and user two, as described in Parker, and thus Parker does not in any way teach or suggest the elements of claims 4, 12 and 22, since no second viewer computer is described or discussed in Parker. Thus, it is respectfully submitted that the additional grounds for rejection with respect to claims 4, 12 and 22 and claims depending therefrom are improper for these additional reasons.

In view of the above, it is respectfully requested that the rejections to the presently pending claims be withdrawn and early notification of allowance provided.

Early and favorable consideration of the present application is respectfully requested. If the Examiner is not in a position to allow all claims, the Examiner is urged to call the undersigned at 212-801-6729. Any additional fees or charges required at this time and in connection with the present application may be charged to Deposit Account No. 50-1561. All correspondence should continue to be mailed to the address associated with the customer number 32361.

Dated: August 30, 2006

By: Respectfully submitted,



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